

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GLEN AUSTIN WAGNER,

Defendant and Appellant.

B294308

(Los Angeles County
Super. Ct. No. BA384191-01)

APPEAL from a judgment of the Superior Court of Los Angeles County. William N. Sterling, Judge. Affirmed.

Paul Couenhoven, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

Appellant Glen Austin Wagner appeals the trial court's denial of his request to strike Penal Code section 12022.53¹ firearm enhancements after remand for resentencing pursuant to Senate Bill No. 620 (2017-2018 Reg. Sess.) (SB 620). The trial court denied the request, concluding that the original sentence was appropriate. Appellant's appointed counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), requesting that this court conduct an independent review of the record. Having done so, we affirm the trial court's order denying appellant's request.

BACKGROUND

In April 2011, appellant shot and killed an unarmed rival gang member inside a Los Angeles nightclub following a brief exchange between the two. One of the bullets appellant fired struck an unintended victim, seriously injuring him. Following trial, a jury convicted appellant of first degree murder (§ 187, subd. (a)) and mayhem (§ 203). The jury also found true allegations that appellant intentionally discharged a firearm, causing great bodily injury in the commission of both offenses (§ 12022.53, subd. (d)), and that the murder was gang-related (§ 186.22, subd. (b)(1)(C)).

The trial court sentenced appellant to a total of 89 years to life in state prison, including two consecutive terms of 25 years to life for the firearm enhancements under

¹ Undesignated statutory references are to the Penal Code.

§ 12022.53. At the time of sentencing, the court had no discretion to strike those enhancements. (See former § 12022.53, subd. (h).) On appeal, we remanded the matter for the trial court to exercise its newly granted discretion under SB 620 whether to strike the firearm enhancements. (*People v. Wagner* (May 23, 2018, No. B282371) 2018 Cal.App.Unpub. LEXIS 3538, at *18.)

In October 2018, the matter came before the trial court for resentencing. Having reviewed the sentencing transcript and hearing the parties' arguments, the court declined to strike the firearm enhancements and ordered that the previously imposed sentence stand. The court described the murder as a "brutal killing," noting that the victim was unarmed and did not physically provoke appellant. The court also noted the severity of the unintended victim's injuries. Appellant timely appealed.

After reviewing the record, appellant's court-appointed counsel filed an opening brief requesting this court independently review the record pursuant to *Wende, supra*, 25 Cal.3d 436. On April 9, 2019, we sent a letter to appellant's last known address, advising him that he had 30 days to submit a brief or letter raising any contention or argument he wished this court to consider. We received no response.

DISCUSSION

We review the trial court's sentencing decision for abuse of discretion and generally presume the court properly

exercised its broad discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) In the absence of a clear showing that the sentence is arbitrary or irrational, the trial court's sentencing discretion will not be disturbed on appeal. (*People v. Ogg* (2013) 219 Cal.App.4th 173, 185.) Senate Bill No. 620 amended section 12022.53 to permit the trial court to strike or dismiss a firearm enhancement under that section "in the interest of justice" (§ 12022.53, subd. (h).)

Because our independent review of the record under *Wende* discloses no arguable issue, we affirm the judgment. On remand, the trial court complied with our directions. It held a resentencing hearing, and exercised its new discretion pursuant to SB 620. After considering the circumstances of appellant's offenses, the court expressed its judgment that the original sentence was appropriate. Thus, the court did not abuse its discretion in denying appellant's request to strike the firearm enhancements. By virtue of counsel's compliance with the *Wende* procedure and our review of the record, appellant has received adequate and effective appellate review of the judgment. (See *Smith v. Robbins* (2000) 528 U.S. 259, 278.)

DISPOSITION

The order denying appellant's request to strike section 12022.53 enhancements is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.